

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EL24WB-63513  
EEOC CHARGE NO. 17E2013-00137

Anthony Sturgis,	)	
	)	<u>Administrative Action</u>
Complainant,	)	
	)	<b>FINDING OF PROBABLE CAUSE</b>
v.	)	
	)	
Continental Auto Parts, LLC,	)	
	)	
Respondent.	)	

On December 19, 2012, Anthony Sturgis (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that a prospective employer, Continental Auto Parts, LLC (Respondent), refused to hire him because of his age and/or race, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's ensuing investigation found as follows.

Respondent is a commercial entity headquartered in Newark, with branch offices in New York (Batavia, Brooklyn, Little Falls, and Newburgh), Pennsylvania (Carlisle), and New Jersey (Mt. Laurel). It sells automotive parts and accessories and claims to have "one of the first fully functioning electronic order processing systems for the after-market automotive parts industry."

Complainant is a 54 year-old African-American Lindenwold resident who, on or about November 28, 2012, saw a *Craigslist* advertisement seeking drivers for Respondent's Mt. Laurel facility. He visited Respondent's website and saw that it was accepting applications for driver positions. He replied by submitting an application on the website, as well as by responding to the Craigslist ad. He noted on his job application that he had an associate's degree in criminal justice, worked for a number of years as a commercial driver, and also worked as a security officer for various business entities. Respondent's records show that the company's headquarters in Newark forwarded Complainant's resume to Mount Laurel Branch Manager Robert Harkinson with an instruction to interview Complainant.

That same day, Harkinson called Complainant. Complainant told DCR that they had an affable telephone discussion and that Harkinson invited him to come to the facility the next day for an interview. Complainant alleged that although Harkinson had sounded interested in hiring him on the telephone, his attitude changed when he saw Complainant in person. Complainant told DCR that he found Harkinson's abrupt change in attitude to be disconcerting. He alleged that during the interview Harkinson asked him his age and about his health. He alleged that when he replied that he was 54, Harkinson stated that he was 54 years old too. Complainant stated that Harkinson told him that he would be contacted for a follow-up interview with the general manager, Mike Koren. Complainant said that despite subsequent telephone calls to Harkinson in which he was told that the position was still open, the second interview never occurred. He stated that he was given "the run-around."

Complainant stated that one day he parked across the street from Respondent's facility to observe the drivers leaving the facility. When he noticed that none of Respondent's drivers were African-American, he concluded that he had been discriminated against.

In March 2013, Respondent hired E.Q., a 37 year-old non-African American, as a driver for the Mt. Laurel facility. In April 2013, Respondent hired R.G., a 28 year-old non-African American, as a driver for the Mt. Laurel facility.

In its response to the verified complaint, Respondent did not challenge Complainant's qualifications for the driver position. Instead, it suggested that Complainant's account was either imagined or exaggerated. It insisted that it had no such advertisement posted on Craigslist or anywhere else at the relevant time. In particular, Respondent reported to DCR in part, as follows:

At the time Complainant submitted his resume, Continental was not hiring for a route delivery driver for its Mount Laurel, New Jersey location. In fact, Continental had not advertised or posted for such a position for its Mount Laurel, New Jersey location at or around the time it received Complainant's resume. . . . Because Continental did not continue to seek applicants with qualifications similar to Complainant's for a route deliver driver position at its Mount Laurel, New Jersey location, Complainant fails to demonstrate that he was not hired under circumstances raising an inference of discrimination—a key element to a *prima facie* case of discrimination.

[See Letter from Jacqueline C. Pirone, Esq., to DCR, Position Statement, Feb. 4, 2013, p 2 & 4.]

Respondent also denied that Harkinson asked Complainant "any questions concerning his age and/or health during their meeting." (*Ibid.*) DCR asked Respondent to provide all applications received for driver positions in Mount Laurel during the relevant time period. Respondent told DCR that the only applications it received were from Complainant, E.Q., and R.G.

Upon receiving Respondent's above-referenced position statement denying the existence of a Craigslist ad, DCR subpoenaed Craigslist's records. The records received in response to the subpoena supported Complainant's version of events. They showed that Respondent posted an advertisement entitled, "route drivers for auto part company," which stated as follows:

looking for a experience PA route drivers to deliver parts to shops for nj and pa must have a clean driving record, have good communication skills & good people skills, good pay. hours and days are 7:30 to 4:00 Monday to Friday. we also run background checks and drug test. you can stop bye and fill an application at 717-k fellowship rd mount laurel nj 08054, 856 235-2300 (PLEASE TRY NOT TO CALL THAT WILL TIE UP ARE PHONES, JUST TRY TO SHOW UP OR LEAVE AN EMAIL and ask for bob, close on sunday THANK YOU

Location: mt laurel nj

Compensation: hourly rate base on experience + commission

OK for recruiters to contact this job poster

Phone calls about this job are ok.  
Please do not contact job poster about other services, products or commercial interests.

[sic throughout]

Craigslist's records indicate that Respondent posted the above employment advertisement on November 28, 2012, then again on January 15, 2013, and then again on February 11, 2013. Complainant's records indicate that he responded to the November 28 posting.

When confronted with a copy of the Craigslist advertisement, Respondent stated that its denial of the advertisement's existence was the result of an "internal disconnect" between the Mt. Laurel facility, which posted the ad, and Respondent's human resources personnel who provided information in response to the verified complaint. See Letter from Elizabeth A. Daly, Esq., to DCR, Oct. 17, 2014, p.1. Respondent maintained, however, that no positions were available at the time, and that Mt. Laurel only ran the advertisement to create a "viable pool of candidates" should one open up in the future. (Ibid.)

DCR subpoenaed Respondent's records for any and all responses to the Craigslist advertisement and all employment applications received between November 2012 and December 2013. In response, Respondent's counsel produced approximately a dozen applications. Counsel stated that it was uncertain whether all of the applications were submitted in response to a Craigslist ad. Those records appear to identify candidates with more commercial driving experience than the two persons who were hired, i.e., E.Q., who had eleven years experience, and R.G., who had ten years experience.

For instance, M.B., a 61 year-old male (Caucasian), applied for a driver position on October 3, 2012. He purportedly worked as a driver for FedEx for twenty four years, and offered references from three automotive businesses.

J.M., a 54 year-old male (Caucasian), applied for a driver position on October 25, 2012. He purportedly had approximately twenty one years experience as a UPS driver.

T.M., a 54 year-old male (race presently unknown), applied for a driver position on February 12, 2013. He purportedly had a college degree, twenty years experience as a commercial driver/mechanic, and held a Class A CDL, and ASE certification.

J.C. (age and race presently unknown) applied for a driver position on February 28, 2013. He purportedly had approximately fifteen years experience as a commercial driver.

There is no indication that any of those applicants were offered the opportunity to interview for the positions. Respondent represented to DCR during the investigation that none of the employees at the Mount Laurel facility are African-American.

### **Analysis**

At the conclusion of an investigation, the Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious

person in the belief that the [LAD] has been violated.” Ibid. The procedure is not an adjudication on the merits but merely an initial “culling-out process” in which the DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

The “clear public policy of this State is to eradicate invidious discrimination from the workplace.” Alexander v. Seton Hall, 204 N.J. 219, 228 (2010). To that end, the LAD was enacted as remedial legislation to root out the “cancer of discrimination.” Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 651-52 (1996).

Among its various prohibitions, the LAD makes it illegal for employers to “refuse to hire or employ” job applicants based on their race or age. N.J.S.A. 10:56-12a. The LAD recognizes that the opportunity to obtain employment is a civil right. Fuchilla v. Layman, 109 N.J. 319, 332, cert. denied, 488 U.S. 826 (1988). A prima facie cause of action is established when a complainant demonstrates by a preponderance of the evidence that he or she “(1) belongs to a protected class, (2) applied and was qualified for a position for which the employer was seeking applicants, (3) was rejected despite adequate qualifications, and (4) after rejection the position remained open and the employer continued to seek applications for persons of plaintiff’s qualifications.” Bergen Commercial Bank v. Sisler, 157 N.J. 188, 210 (1999). Guided by those statutory and judicial directives, the Director hereby finds—for purposes of this disposition only—as follows.

Complainant belongs to a protected class (with respect to both race and age). He applied for a position for which Respondent was seeking applicants. He was rejected despite adequate qualifications. The position remained open. Respondent continued to seek applications for persons of Complainant’s qualifications. Moreover, it appears that Respondent passed over Complainant and other candidates for younger, non-African-American candidates with less driving experience

Respondent initially denied the existence of any job postings seeking applicants when Complainant applied for the position on November 28, 2013 (i.e., challenging the second prong), and argued that the position therefore did not remain open (i.e., challenging the fourth prong) because the job did not become available until months later in March 2013. However, those assertions appear to be contradicted by the documentary evidence, namely, the fact that it ran an employment advertisement on three occasions announcing that the Mt. Laurel facility was “looking for . . . experience[d] PA route drivers to deliver parts to shops for nj and pa.” When confronted with those employment advertisements, Respondent’s counsel claimed that the company ran that ads only to create a viable pool of candidates. Respondent has not produced anything other than the statement of its counsel to support that contention.

The evidence reviewed during the investigation suggests that Respondent’s explanation for the existence of the job postings, and its representation that it was not seeking drivers when Complainant applied, may be pretextual. Respondent’s records indicate that within one hour of Complainant submitting his application, Harkinson was instructed to interview him. The speed with which it sought to interview Complainant suggests a greater interest in hiring a driver rather than merely collecting a pool of applicants should positions open in the future. Further, despite collecting a pool of seemingly highly qualified driver applicants, there is no indication that Respondent went back to this pool to interview candidates before hiring E.Q. and R.G.

Respondent notes that Harkinson is the same age as Complainant. It argues, "It certainly flies in the face of reason to believe that an individual would discriminate against someone in the same protected class." See Letter from Pirone, supra, p.4-5. That argument is not particularly persuasive in the present circumstances. The fact that Respondent reports Harkinson to be the same age as Complainant lends credence to Complainant's version of events, i.e., his claim that Harkinson asked him his age and health status during the interview (in violation of N.J.S.A. 10:5-12(c)), and then told him that they were the same age. Ageism does not necessarily mean that the decision-maker hates or harbors ill-will toward persons of a certain age. In the employment context, ageism may mean making a personnel decision based on impermissible assumptions about how age relates to the performance of a particular job, e.g., assuming that a younger worker would work faster or is less likely to become injured than an older worker. So the fact that Harkinson may be the same age as Complainant does not serve to effectively rebut the allegation that the Branch Manager was looking for younger employees to serve as drivers for its deliveries of auto parts.

Respondent also argues that "over 60% of the employees . . . are minorities (primarily Hispanic)" at its Mt. Laurel facility. See Letter from Daly, supra, p. 2. That statistic would be relevant if Complainant were alleging that the facility discriminates against Hispanics or all minorities. But the allegation is that the decision-makers at the Mt. Laurel facility discriminated against an applicant based on his age and the fact that he is African-American. When asked to provide a racial breakdown of its workforce at that facility, Respondent acknowledged that it did not employ any African-Americans at that location.

In view of the concerns raised above, the Director finds at this threshold stage in the process that there is a sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.

DATE:

2-5-15

  
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Craig Sashihara, Director  
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